

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

MAY 24 2012

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2012-0113-PR
)	DEPARTMENT B
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
ALBERT MUNOZ,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF MARICOPA COUNTY

Cause No. CR2005135281001DT

Honorable J. Richard Gama, Judge

REVIEW GRANTED; RELIEF DENIED

William G. Montgomery, Maricopa County Attorney
By Diane Meloche

Phoenix
Attorneys for Respondent

Daniel R. Raynak

Phoenix
Attorney for Petitioner

K E L L Y, Judge.

¶1 In this petition for review from the trial court's denial of his petition for post-conviction relief, Albert Munoz contends the court erred in concluding he had not raised a colorable claim of ineffective assistance of counsel. Munoz argues, as he did below, that his trial counsel provided ineffective assistance because he did not conduct

any witness interviews, did not effectively present Munoz’s defense, and failed to make appropriate objections during trial. We will not disturb a trial court’s ruling on a petition for post-conviction relief absent an abuse of discretion. *State v. Bennett*, 213 Ariz. 562, ¶ 17, 146 P.3d 63, 67 (2006). Munoz has not met his burden to show such an abuse.

¶2 Munoz was convicted after a jury trial of attempted first-degree murder and sentenced to an aggravated prison term of twenty-one years. On appeal this court reviewed the record for fundamental error pursuant to *Anders v. California*, 386 U.S. 738 (1967), affirmed the conviction and, finding sentencing error, affirmed the sentence as modified. *See State v. Munoz*, No. 1 CA-CR 2007-0134, ¶¶ 2-3, 8, 10 (memorandum decision filed Feb. 3, 2009). Munoz then sought post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P. The trial court summarily denied the petition, and this petition for review followed.

¶3 Citing *State v. Radjenovich*, 138 Ariz. 270, 275, 674 P.2d 333, 338 (App. 1983), and *State v. Draper*, 162 Ariz. 433, 439, 784 P.2d 259, 265 (1989), Munoz asserts “counsel was per se ineffective” because “[t]here is nothing in the record, nor the file of defense counsel, to suggest that he did any interviews in this case.” Although Munoz acknowledges “there is a claim in the log of the defense attorney to 8 days[’] worth of interviews,” he asserts this is “wholly inconsistent with the number of potential witnesses in this case.”

¶4 Even assuming Munoz could show ineffective assistance based on the absence of interview notes in his trial counsel’s file,¹ he still must establish resulting

¹Unlike *Radjenovich*, in which defense counsel stated on the record that he had not interviewed any of the state’s witnesses, Munoz relies only on the absence of materials in his trial counsel’s file that would indicate interviews were conducted. 138 Ariz. at 274, 674 P.2d at 337.

prejudice. *See Strickland v. Washington*, 466 U.S. 668, 687 (1984); *Radjenovich*, 138 Ariz. at 275, 674 P.2d at 338. And, Munoz does not meaningfully argue, much less establish, that counsel’s purported failure to conduct interviews resulted in prejudice.² Therefore, his claim is not colorable. *See State v. Salazar*, 146 Ariz. 540, 541, 707 P.2d 944, 945 (1985).

¶5 The trial court, in its minute entry, clearly identified, analyzed, and correctly ruled on Munoz’s remaining claims of ineffective assistance of counsel, and we approve and adopt the court’s analysis. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). Accordingly, although we grant review, we deny relief.

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge

CONCURRING:

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge

²In connection with his argument that “trial counsel was per se ineffective,” Munoz claims that it is not his “burden . . . to demonstrate what information would have been gained through t[he] interviews.” But to warrant an evidentiary hearing Munoz was required to present “a colorable claim, that is, a claim which if his allegations are true might have changed the outcome.” *State v. Schrock*, 149 Ariz. 433, 441, 719 P.2d 1049, 1057 (1986). Munoz, therefore, had the burden to show that absent the alleged failure to interview witnesses, the verdict might have been different.